Slavery or Involuntary Servitude in Illinois Prior To and After Its Admission as a State

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As slavery, in the territory now embraced in the State of Illinois, depended upon conditions prior in time to its separate existence as a political division, it will be necessary to consider these conditions, the documentary provisions upon which its existence in the state was based, and as a preliminary to this examination, it will be proper to consider the origin of the institution in the territory from which the state was formed.

Slaves were imported into that part of the country, which afterward became the North West Territory, from two sources, both from French provinces.

The first introduction of Africans into the Illinois territory was in 1720, by Renault, agent and manager of The Company of St. Phillips, who brought a colony from France and purchased five hundred slaves at St. Domingo, which he sold to the colonists before his return to France in 1744.

In 1615 an edict of Louis XIII of France first recognized slavery in the French provinces in America ,and settlers from Canada in these regions, brought with them the French laws and customs, and among them were those which recognized slavery, and in 1724 Louis XV published an ordinance which re-enacted the edict of Louis XIII, for the regulation of the government and administration of justice, policies, discipline and traffic in Negro slaves in the province of Louisiana, of which Illinois was then a part. This included the provision of the Civil Law that if one of the parents were free, the offspring should follow the condition of the mother, and prohibited the

sale separately of husband, wife, or minor children either by contract or execution.

By the treaty of peace between England and France in 1763 this territory, as a dependency of Canada, was ceded to Great Britain, and when General Gage took possession he issued a proclamation in 1764, to the late subjects of France, that those who chose to retain their lands and become British subjects, should enjoy the same rights and privileges, the same security for their persons and effects, and liberty of trade, as the old subjects of the King.

At this time slavery was recognized in all the American colonies, and this proclamation extended the colonial laws and customs to the inhabitants of Canada and her dependencies, and of course recognized slavery as legal.

When George Rogers Clark, by his expedition made the conquest of the territory, as soon as the news was received, the Virginia House of Burgesses declared the whole of the North West territory a part of her chartered territory, provided by an Act to erect it into a county, and extend her laws and jurisdiction to it. The preamble of the Act recited that, "The inhabitants had acknowledged themselves citizens of the commonwealth of Virginia, and taken an oath of fidelity to the State", and it was declared that they should enjoy their own religion, with all their civil rights and property.

The treaty of Peace with England in 1783 ceded the whole of this country to the United States and in 1784, Virginia ceded the territory to the United States.

This deed of cession from Virginia contained a stipulation, "That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents and the neighboring villages, who have professed themselves citizens of the State of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties."

These provisions cover substantially all classes of persons but one, which was that of the older inhabitants, who had not claimed citizenship of Virginia, who were not protected.

But by treaty made between Great Britain in 1794 commonly called the "Jay Treaty" under which the British finally evacuated the west, the rights of the ancient inhabitants who had not claimed citizenship of Virginia, were protected, and one year was given them to accept American citizenship. This also embraced the inhabitants of the north part of the North West Territory which was not conquered by Clark.

In 1784 the first ordinance for the government of the Territory was passed. As originally drawn there was an article of compact providing, "That after the year 1800, there shall be neither slavery or involuntary servitude in any of the said states, (those provided for in the ordinance) otherwise than in punishment of crime, whereof the party shall have been convicted to have been personally guilty." Under the rules of Congress the affirmative vote of seven states was required to carry any measure. A motion having been made by a delegate from a southern state, to strike out the provision, the votes of six northern states were opposed to the motion. As each state had but one vote, and two delegates, one of the delegates from New Jersey being absent, that state had no vote, and the motion prevailed and the provision was stricken out.

The measure was drafted by Mr. Jefferson, and he was greatly chagrined at the striking out of the slavery clause. Two years later, he wrote, "The voice of a single individual would have prevented this abominable crime from spreading itself over the new country. Thus we see the fate of millions unborn hanging on the tongue of one man, and Heaven was silent in that awful moment, but it is to be hoped that it will not always be silent; and that the friends to the rights of human nature will in the end prevail."

From this language it will be seen that Mr. Jefferson did not consider the language of the Declaration of Independence, a string of glittering generalities, but that he intended to express a self evident truth, when he said that all men were endowed with certain inalienable rights of life, liberty and the pursuit of happiness, and that he did not exclude the slaves then in servitude.

On the 27th day of October, the Ordinance of 1787 was passed without one dissenting vote. At first blush it would seem that the terms of this ordinance were prohibitory and prevented slavery in this territory.

The sixth article provides plainly that, "There shall be neither slavery nor involuntary servitude in such territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted", with a provision for the reclamation of persons, from whom labor or service was lawfully claimed in any of the original states, who had escaped from their masters.

Standing alone this was sufficient to prohibit slavery in the territory, if Congress had the authority to enact it under the circumstances, and these circumstances were recognized in other portions of the instrument.

This is seen in the suffrage clause which restricts suffrage to free male inhabitants, and in estimating the population it was restricted to free inhabitants, and in the provisions for the conveyance of property, the act of Virginia, preserving the civil rights of the inhabitants who recognized the authority of the state to their rights and property was substantially copied, thus recognizing the rights of that class of inhabitants to hold their slaves.

Taking these matters into consideration, there seems to be no doubt that the rights of the masters to their slaves was recognized by all classes, so long as the territory remained undivided, and in the different divisions until they become states.

There seems to be no decision upon this matter so long as the territory remained together, but there was one case at Vincennes in the summer of 1794, where a Negro and his wife applied for a writ of habeas corpus to test their right to freedom, but before it was reached for trial, the colored people were kidnapped and carried away.

The first cases in any of the territories after their separation, were some habeas corpus cases in the territory of Michigan, after its separation from Indiana.

As this territory had remained in the possession of the

British forces until 1796, the Court held that slavery existed as preserved by Jay's Treaty, in favor of British masters who held their slaves in the territory in the actual occupancy of the British troops on June 16, 1796, but that every other man coming into the territory, was a freeman, unless he was a fugitive escaping from service from a master in some American state, or territory, in which case he must be restored.

This same view was taken in 1845 by the Supreme Court of Missouri, when a Negro claimed that his mother had been freed, by a residence of four years in Macinac and Prairie du Chien, from 1791 to 1795, when she was taken to Missouri and sold. Plaintiff was born after his mother had been taken to Missouri. The Court held that residence in that part of the North West Territory not embraced in the Virginia conquest, before the British evacuation, did not free a slave.

Chouteau vs. Peirre, 9 Mo. p. 3.

I have found no cases holding the contrary doctrine.

The sixth article of the ordinance, which prohibited slavery, aside from the excepted cases, did not give unqualified satisfaction to the inhabitants of the territory.

In 1796, four residents of Kaskaskia filed a petition asking Congress to suspend the operation of this restriction in the ordinance.

In 1802, a convention was called by General Harrison, the Governor, and a memorial was sent to Congress asking for a suspension of the sixth section of the ordinance. In 1803, Mr. Randolph, chairman of the special committee, reported against the adoption of the prayer of the memorial, but the matter came up at each of the next three sessions, and was favorably reported but not acted upon, and in 1807, a remonstrance was filed. The matter was referred to a committee which reported unfavorably, which ended the matter.

Indentured and Registered Servants.

The friends of slavery, however, were not satisfied, and after the admission of Ohio as a state in 1807, an Act of the territorial legislature of Indiana, including Illinois, which

had probably been adopted a year or two before, was re-adopted, and reported as bearing date of September, which was intended to materially avoid the prohibition of the Ordinance of 1787.

The first section of the Act provided that, "It shall be lawful for any person, being the owner of any negroes or mulattoes of and above the age of fifteen years, and owing service and labor as slaves in any of the States or territories of the United States, or for any citizen of the United States purchasing the same, to bring the said negroes or mulattoes into this territory."

The second section provides "That within thirty days after bringing the slaves into the territory, the owner or master should take them before the Clerk of the Court, and have an indenture between the slave and his owner entered upon record, specifying the time which the slave was compelled to serve the master." (The term was usually fixed at ninety-nine years).

Section three provided that if the slave refused to consent to the indenture, the master should have the right within sixty days, to remove the slave to any state or territory where such property could be legally held.

Section four, gave the right to punish the slave with stripes for laziness, misbehavior, or disorderly conduct.

Section five provided that any person removing into this territory, and being the owner of any negro or mulatto under the age of fifteen years, it should be lawful for such person, owner or possessor to register the same and to hold the said negro or mulatto to service or labor, the males until they arrive at the age of thirty-five and the females until the age of thirty-two years.

Section thirteen, provided that children born in the territory, of a person of color, owing service of labor by indenture, according to law, shall serve the master or mistress, the males until the age of thirty, and females until the age of twenty-eight years.

There were provisions in the act for the sale of servants by

the assignment of the indenture, thus making them virtually slaves, under the name of "indentured servants."

In 1812, at the first session of the legislature of Illinois, the Act which had been adopted by the Governor and Judges of the whole territory, was re-enacted as the law of Illinois, though repealed in Indiana in 1810. There seems to be no question that this act was void, as repugnant to the sixth section of the Ordinance of 1787, which was the fundamental constitution of this territory.

I find no reference to any decisions as to the validity of the Ordinance in the territorial courts, but some time after the admission of the State, it was decided that the act was void, and that the validity of such contracts was based upon the Constitution of 1818.

At the session of the legislature of Illinois in 1817, a bill was passed by both houses to repeal so much of the act as authorized the bringing of negroes and mulattoes into the state, and indenturing them as slaves. The Governor vetoed the bill, giving as his reason, that there was no such law in Illinois as the act of 1807, as it was a law of Indiana, which was technically true, although re-enacted in Illinois. The Governor was himself the owner of a number of indentured servants.

Slavery Under the Constitution.

The State of Ohio was the first state admitted into the Union from the Northwest Territory. As this was in 1802, the Act of 1807 of the territory of Indiana, was never in force in that state.

As the settlement of the state was not made until about the time of the passage of the Ordinance of 1787, there was nothing in the terms of the Ordinance, which would affect that part of the North West Territory, in contravention to the terms of the prohibitory sixth section of the Ordinance, so that the Constitution of 1802, which absolutely prohibited slavery and involuntary servitude, except for crime, and made void indentures of persons unless made in a state of

freedom, and also provided that indentures thereafter made, either outside the state or in the state for more than one year, should be of no validity except in cases of apprenticeships, is the only document governing that state.

I have never seen any statement in any historical work that slavery ever existed in the territory or state of Ohio, but in the life of John Brown by Elbert Hubbard, it is stated that slavery existed in the state in 1811, but this work can hardly be recognized as historical.

The constitution of Indiana adopted in 1816, is the next in order, and provided that "There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted, nor shall any indenture of any negro or mulatto hereafter made and executed out of the bounds of the state, be of any validity within the State."

The Committee had adopted additional matters against indentures similar to those in the Ohio Constitution, but the anti-slavery delegates who had always contended that the Act of 1807 was unconstitutional, objected to anything which might concede its validity and those provisions were stricken out.

The adoption of the constitution did not result in the immediate abolition of slavery and involuntary servitude, as in 1840 the census credits Indiana with three female slaves.

That this condition prevailed, on account of the ignorance of many of the slaves, may be seen from the case of State vs. Lasselle, 1 Blackford, 60, which was a habeas corpus case decided by the Supreme Court in 1820. The defendant answered that Polly, the name of the woman on whose behalf the case was brought, was his slave by purchase, the issue of a woman bought of the Indians prior to the Treaty of Greenville. The lower court decided in favor of the defendant. In the Supreme Court, it was argued for the defendant, that the Ordinance of 1787 did not prohibit the slavery which existed at its adoption, but that it expressly preserved it, and that the

property granted by it, could not be divested by the Constitution.

The Court held, that the Virginia deed of session and the ordinance were immaterial, that the question must be decided by the provisions of the Constitution.

They held that it was within the legitimate powers of the convention in framing the constitution, to prohibit the existence of slavery in that state, and that they could conceive of no form of words in which the intention to do so could have been more clearly expressed, and it was accordingly held that Polly was free.

The framers of the first Constitution of Illinois, certainly did not use language to express a present intent to abolish slavery, and it is the opinion of some writers that it was only because of the requirement of the Enabling Act of Congress, that the convention enacted Section I of Article VI: "Neither slavery nor involuntary servitude shall hereafter be introduced into this state."

It not only failed to prohibit slavery as it then existed, but made legal the indentures which had been illegal before that date, because of the void act of 1807 re-enacted in Illinois in 1812, by the Third Section of the same Article, of the Constitution which provides that:

"Each and every person who has been bound to service by contract or indenture, in virtue of the laws of Illinois Territory, heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contract or indentures, and such negroes and mulattoes as have been registered in conformity with the aforesaid laws, shall serve out the time appointed by said laws; provided, however, that the children hereafter born of such persons, negroes or mulattoes, shall become free, the males at the age of twenty-one years, the females at the age of eighteen years.

In the case of Phoebe vs. Jarrot. Breese, 268, the Court held that the Act of September 17th, 1807, was void, as being repugnant to the Sixth Article of the Ordinance of 1787, but

that the contracts of indenture were rendered valid by the Third Section of Article Sixth of the Constitution, and that the adoption of the Constitution and the admission of the State into the Union under it, abrogated so much of the Ordinance of 1787 as was in conflict with it."

As this provision of the Constitution was the only ground for keeping persons legally free, in bondage, it could not have been enforced under that portion of Section 1 of the 14th Amendment to the Constitution of the Federal Constitution; that no state should deprive any person of life, liberty, or property without due process of law, but as there was in 1818 no such provision, it had the effect of keeping slavery in the State until the adoption of the Constitution of 1848.

A number of questions as to the rights of persons from, and in the state, have been presented to the Courts of the state, and some decisions have been made by the Courts of other states. Among those questions decided at rather an early date, was that in Illinois the presumption of law is in favor of the freedom of any person.

Bailey vs. Cromwell 3 Scam. 71.

and that the *onus probandi* is on the one who claims that any person is a slave or a registered servant.

Kinney vs. Cook, 3 Scam, 232.

This holding was different from that of the Courts of Missouri, and other slave states in cases of colored persons.

A construction of the 3rd Section of Article VI of the Constitution was given in Choisser vs. Hargrave, 1st Scam, Page 17, which held that this Act of 1807 only applied to persons registered, in conformity to the provisions of the laws governing the registration, which required that it be done within thirty days from the entrance into the state, and it being shown that the registration was not made until eighteen months after the party was brought into the state, it was held he was entitled to his freedom.

ATTEMPT TO AMEND THE CONSTITUTION TO ALLOW SLAVERY.

At the time of the admission of the state it is probable that

the proportion of voters in favor of unlimited slavery was greater than those of the opponents, and that the convention only adopted the Sixth Article, because of the opinion, that an attempt to make a slave state, was likely to defeat the admission into the Union on account of the Sixth Article of the Ordinance of 1787. The animus of the majority is shown by the enactment of what are known as the Black Laws, and the laws against kidnapping free negroes and mulattoes in which the only penalty provided was a civil action on behalf of the kidnapped person, who would have been carried out of the state and could not enforce it.

In the election of 1822, which largely depended upon this question, the aggregate vote of the two candidates of anti-slavery principles, was but 3330, while that of those in favor of slavery were 5303, nearly 2000 greater, but the election being by a plurality vote, the leading anti-slavery candidate for Governor received the greater number of votes, while the Legislature had nearly two-thirds in each house, of the pro-slavery party, which also elected the Lieutenant Governor. During the first half of his term, the Governor and Legislature clashed over these matters. The Governor recommended a revision of the Black Laws, and the enactment of adequate penalties for repression of the crime of kidnapping which had become frequent.

This immediately precipitated a struggle to amend the constitution, and a committee to whom the matter was referred reported and recommended the adoption of a resolution to submit the question of the call of a convention to amend the constitution, at the next election for the election of members of the General Assembly.

As this required the affirmation vote of two thirds of each body, there was a lack of one vote in the house. In a contested election case, the sitting member had been held to be entitled to his seat, but when he refused to vote for the resolution, a motion to reconsider the vote was carried, and the contestant was seated, which gave the required two-thirds vote in that body, and the vote of the Senate was sufficient, so

the resolution was adopted. For eighteen months the contest was carried on with great violence in the state, but at the election in 1824, the resolution was defeated by a majority of nearly 1800.

In the Constitution of 1848, slavery and involuntary servitude, except as a punishment for crime, was prohibited, but the Black Laws prohibiting the immigration of persons of color into the state was carried by nearly a two-thirds vote, and another Section was adopted requiring the Legislature at the next session to pass laws which should prevent free persons of color from coming into the state for residence, and prevent parties from bringing them into the state for the purpose of freeing them. Pursuant to this provision, the Legislature in 1855 passed an Act making it a high misdemeanor for a colored person to come into the state for the purpose of residence, and remain for ten days, with a penalty of a fine of $50.00 and if the fine was unpaid, the party might be sold to the person who would agree to take him for the shortest period for that sum, and costs. In a case decided in 1864, the Supreme Court held the law to be valid, because as the sale was but for a limited period, it was only in the nature of an apprenticeship, and that the state had the power to define offenses, and the exercise of such power could not be inquired into by the Court.

Nelson vs. People, 33 Ill. 390.

These Black Laws were continued with slight modifications until 1865 when they were repealed by the Act of February 7th.

A number of decisions concerning the rights of persons claimed to be slaves, have been decided by the Courts of this state, and the Courts of other states, growing out of the laws of this state and of the other states in the territory.

No case has been found in the Supreme Court of this state as to the status of children of slaves of the old French settlers until that of Jarrot vs. Jarrot, 2 Gilman, 1, decided by the Supreme Court at December Term, 1845.

Plaintiff was the grandson of a woman who was proven to

have been a slave at Cahokia in 1783, and son of her daughter born in 1794, who was kept in slavery by the father of defendant, who bequeathed her to defendant in February 1818, and plaintiff who was then about twenty-five or twenty-six years old, was born after his mother was bequeathed to defendant. The lower Court found for the defendant, but the Supreme Court reversed the judgment, and as the exact date of the birth of the plaintiff did not appear, but as it was so near the adoption of the Constitution, that it might have been before that date, the Court decided that the children of a slave of a French master born after adoption of the Ordinance of 1787, whether before or after the adoption of the Constitution, were free. The Court cited a number of cases from other states, but the only one exactly in point was Merry vs. Tiffin, I Mo. 725, where the mother of plaintiff who had been held as a slave in Virginia, had been taken into Illinois before the Ordinance of 1787. The plaintiff was born after the Ordinance was passed, and it was held that he was free.

The Court held that the provisions of the deed of session of Virginia were satisfied by securing to the masters the rights they then had, without including things not in existence, and there was nothing in that cession which forbade Congress to fix a limit to things which might afterward be the subject of property.

The same question came up later in the same state in a case by Aspasia, a colored woman born in Illinois after the Ordinance of 1787, and the Court upheld the former doctrine. The case was taken to the Supreme Court of the United States, which held that the right to hold a child born after the Ordinance, as a slave *was not given by the Ordinance,* and that the Court had no jurisdiction in the matter.

Menard vs. Aspasia, 5 Peters, 504.

In 1830 the same question was decided in the same way by the Supreme Court of Louisiana.

Merry vs. Chlxnaider, 26 Martin, 699.

That the constitution of a state may prohibit slavery, notwithstanding the provisions of the exceptions to Art. 6 in the

Ordinance of 1787, was held by the Supreme Court of Indiana in State vs. LaSalle 1, Blackford 60.

This view is also announced by the Supreme Court of Mississippi, in the case of Harvey vs. Decker, et. al., Walker 36.

The effect of bringing slaves into this state for the purpose of residence and of hiring them out, has been decided by the Courts of several states, as well as of this state. In the case of Willard vs. People, 4 Scam. 461, it was held that passing through the state with his master did not free a slave. The first outside case I have found is Winning vs. Whitesides, 1 Mo. 472, where the plaintiff had been taken into Illinois from North Carolina about 1797, where she had been kept in slavery for three or four years and then taken into Missouri, where she had remained in slavery for nearly twenty years. The Court held that her residence in Illinois gave her freedom and that the masters right did not revive when taken to a state where slavery was permitted, if she failed to claim her right in the free state. This doctrine was upheld by the Supreme Court of Virginia, when a slave girl was sold to an Ohio resident, and delivered to the agent in Ohio, but the bill of sale was made to defendant who knew of the transaction. The girl remained in Ohio for two years when she returned to Virginia and was taken possession of by defendant. It was held that she became free.

Fanny vs. Griffith, Gilmer 143.

The Supreme Court of Missouri recognized the same doctrine in seven other cases, but later, in 1853, when there was a hostile feeling in the slave states by reason of the greater activities of the abolitionists in the free states, it overruled all the foregoing cases arrogating to itself the powers of a legislature, in Scott vs. Emerson, 15 Mo. 576, and Sylvia vs. Kirby, 17 Mo. 439. For the same reason, the legislature of Louisiana in 1848, changed the law in that state, by the passage of an Act providing that residence in a free state should not free a slave who returns to that state.

In Kentucky it was held that an infant domiciled in Ohio for six months became free, and that a return to Kentucky

while still a minor, did not prejudice his claim.

Henry vs. Evans, 2 Duvol, 259,

but it was held that sending a slave girl twice with his daughter to Ohio, while on visits, remaining less than a month each time, did not give her her freedom when she returned to the State.

Collins vs. America, 9 B. Monroe, 565.

A number of questions have arisen as to the character of registered and indentured servants.

In the case of Nance vs. Howard, Breese 183, it was held that registered servants were property, and could be sold under execution.

In Phoebe vs. Jay, Breese, 207, it was held that indentured servants under the Constitution of 1817, do not become free by the death of the Master, but pass to the legatees, executors or administrators, but not to the heirs-at-law, but that an administrator can only sell the servant, and cannot require the performance of service. The doctrine as to the validity of indentures was re-affirmed.

Sarah vs. Borders, 4 Scam, 545.

In the case of Boon vs. Juliet, I Scam, 258, it was held that the children of registered servants under the Fifth Section of the Act of September 17, 1807, were not within the provisions of the 3rd Section of Article VI of the first Constitution, but were free and could not be held to service. As the constitution only provided that persons who had been bound by *contract or indenture*, should serve out their time, and did not mention the provision of the act of 1807 as to their children, the children became free.

In Kentucky a case arose as to the effect of the Registration Act of 1807 of Indiana, on the status of slaves owned before the removal into that territory.

Rankin vs. Lydia, 2 A. K. Marshall, 471.

The Court says that as the article of the Ordinance of 1787, provides that slavery or involuntary servitude is prohibited, that when a person was brought into the territory and indentured or registered, that they were no longer slaves, and that

when taken back to Kentucky, they brought an action for their freedom, the former master was estopped from claiming them as slaves. In this case while in Indiana, the registered servant had been sold several times and the last time to a resident of Kentucky, who took her back to that state, where she brought an action of assault and battery to test her right to freedom. It was held that the act of registration was equivalent to emancipation and she became free. The question of the right to her as a servant was not made. This is more consistent than the decision of the Illinois Courts, holding the servants to be property.

The Effect of the Admission of a State Upon the Provisions of the Ordinance of 1787.

The authorities to the effect that the adoption of a state constitution and admission by Congress, abrogates by common consent, all the provisions of the Ordinance which were contrary to the provisions of the constitution are too numerous to require citation, but the statement by Chief Justice Taney in the opinion in Strader vs. Graham, 10 Howard, that the adoption of the federal constitution superceded the provisions of that ordinance, are not so generally known, and I have found no other case which decides this question. It seems to be unnecessary to the determination of the case, and may well be doubted.

The number of negroes in Illinois at the close of the British occupation, has been estimated at about 650, but whether this number included negroes and mulattoes brought in and indentured or registered under the Act of 1807, I have not been able to learn.

Of course the effect of the adoption of the Constitution of 1848, made slavery and involuntary servitude illegal in Illinois. Whether there were any of the original slaves living at that time, I have not been able to learn, but they must have been few, if any; but these may have been indentured servants, as they might have been brought in up to 1818.